

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

AWA DIAGNE and
AWA BEST BRAIDS, LLC,

Petitioners/Plaintiffs,

v.

CITY OF SOUTH FULTON, GEORGIA, a
political subdivision of the State of
Georgia,

Respondent/Defendant.

Civil Action File No. _____

On Appeal from the City of South Fulton,
City Council Case No. U24-011

**PETITION FOR REVIEW TO SUPERIOR COURT AND
COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF,
AND ATTORNEYS' FEES**

Petitioners/Plaintiffs Awa Diagne and Awa Best Braids, LLC (“Petitioners”) file this Petition for Review to Superior Court and Complaint for Declaratory Judgment, Injunctive Relief, and Attorneys’ Fees against Respondent/Defendant City of South Fulton, Georgia (“Respondent” or “the City”), showing as follows:

1. This is a civil rights action on behalf of a recently widowed mom to allow her to open her African hair braiding shop so that she can support her children. Respondent refused to let her open, explicitly because she would pose competition for nearby businesses. Such economic protectionism was just held unconstitutional by the Supreme Court of Georgia.

2. Awa Diagne and Awa Best Braids, LLC, the Petitioners named above, petition the Superior Court of Fulton County for review of the final judgment rendered by Respondent City of South Fulton, Georgia with the following case number designated by the lower judicatory: U24-011. The Council voted to deny Petitioners’ application on July

23, 2024, and approved the minutes of its July 23 meeting at its August 13, 2024 meeting. This appeal is timely.

3. Petitioners also bring this civil action for declaratory judgment, injunctive relief, and attorneys' fees against Respondent challenging its policy, practice, and custom of treating new businesses less favorably if they might compete with an established business and challenging the requirement for Petitioners to get a special use permit in the first place.

CONCISE STATEMENT OF THE FINAL JUDGMENT APPEALED

4. Petitioners appeal the South Fulton City Council's ("Council") denial of a special use permit to operate a braiding shop at 5370 Campbellton Fairburn Road (Parcel ID: 09F300001180651) in MIX (Mixed Use District/South Fulton Parkway Overlay District) zoning district (Council District 3) (the "Subject Property"). The Council voted to deny Petitioners' special use permit at its regular meeting on July 23, 2024, and affirmed the minutes of that meeting on August 13, 2024.¹

5. The Council's decision to deny Petitioners' special use permit is unconstitutional, unlawful, arbitrary, capricious, unreasonable, imposes a significant detriment on Petitioners, and is unrelated to the health, safety, morals, or welfare of the public.

¹ The Council is required by law to issue a written decision including findings of fact. South Fulton Code of Ordinances § 804.03(a). On information and belief, the Council has not issued a written decision or findings of fact regarding its denial of Petitioners' special use permit. At the very least, Respondent has not responded to multiple requests by Petitioners' counsel for a copy of a written decision or findings of fact.

RECORD IN THE LOWER JUDICATORY

6. The following describes any existing recording, transcript, or other record of evidence in the lower judicatory:

- a. The application Petitioners filed with the City Council requesting a special use permit to operate a braiding shop at the Subject Property (the “SUP Application”) (attached as Exhibit 1);
- b. All versions of any staff reports created in connection with Petitioners’ SUP Application that were circulated internally and provided to the Council, with all attachments (“Staff Reports”), including but not limited to the June 26, 2024 Staff Recommendation recommending conditional approval (attached as Exhibit 2);
- c. All versions of any Planning Commission reports created in connection with Petitioners’ SUP Application that were circulated internally and provided to the Council, with all attachments (“Planning Commission Reports”);
- d. All evidence submitted to Respondent by Petitioners before or at the Planning Commission meeting on June 26, 2024;²
- e. All presentations made to the Planning Commission by Petitioners and anyone opposed to Petitioners, and all documents, recordings/minutes, agenda packets, and work sessions of the June 26, 2024 Planning Commission meeting;

² A video of the June 26 Planning Commission Hearing is available on the City of South Fulton’s YouTube channel [here](#). The relevant portion starts at 1:36:00. In case there are any technical problems, Petitioners’ counsel has also saved a copy of the video on their servers, which is available [here](#).

- f. All evidence, documents, or communications supporting or discussing Petitioners' SUP Application submitted to Respondent by Petitioners before or at the City Council meetings held on July 9 and July 23, 2024, including but not limited to a July 23, 2024 letter from Attorney Erica Smith Ewing of the Institute for Justice to the members of the City Council, Mayor Khalid Kamau, and City Attorney Vincent D. Hyman (attached as Exhibit 3), and a July 25, 2024 email response from City Attorney Hyman (attached as Exhibit 4);
- g. All presentations made to the Council by Petitioners and all recordings/minutes, agenda packets, and work sessions of the City Council meetings held on July 9, 2024, and July 23, 2024, including but not limited to the certified minutes of the City Council's July 23, 2024 meeting (attached as Exhibit 5);³
- h. All presentations made to the Council by anyone opposed to Petitioners and all recordings/minutes, agenda packets, and work sessions of the City Council meetings held on July 9, 2024, and July 23, 2024;
- i. All relevant documents in the possession of the City Council, including communications between City Council members and members of the public who supported or opposed Petitioners' SUP Application, specifically including any communications between Council members

³ A video of the July 9 Hearing is available on the City of South Fulton's YouTube channel [here](#). The relevant portion starts at 2:54. Likewise, the video of the July 23 hearing is [here](#) and the relevant portion starts at 4:15:23. In case there are any technical problems, Petitioners' counsel has also saved copies of the videos on their servers, which are available here: [July 9](#) and [July 23](#).

and the owner of Salon Vibe, who opposed the application for protectionist reasons;

- j. All documents responsive to Open Records Request R000917-072224 sent to Respondent by Attorney Erica Smith Ewing on July 22, 2024;
- k. Any written decision regarding Respondent's denial of Petitioners' SUP Application;
- l. Any findings of fact regarding Respondent's denial of Petitioners' SUP Application;
- m. A certified copy of the South Fulton Zoning Code; and
- n. Upon information and belief, Respondent may have additional information and documents in its possession that should be part of the record.

PARTIES, JURISDICTION, AND VENUE

7. Petitioner Awa Diagne leases the Subject Property, 5370 Campbellton Fairburn Road, Unit 200. Petitioner is a citizen of the United States and a resident of Fulton County, Georgia. Awa Best Braids, LLC, is Awa's business and a domestic limited liability company authorized to bring this action.

8. The City of South Fulton, Georgia, is subject to the jurisdiction of this Court and is the Respondent to this petition pursuant to O.C.G.A. § 5-3-3(11)(B). The City may be served with process by service upon its Mayor, Khalid Kamau, at 5440 Fulton Industrial Boulevard, South Fulton, Georgia 30336. The City may also be served through its counsel if counsel consents.

9. This Court has subject matter jurisdiction over the appeal pursuant to O.C.G.A. §§ 5-3-4 and 36-66-5.1(a)(2). The City Council acted as a lower judicatory body

that rendered a quasi-judicial decision concerning Petitioners' SUP Application. The City Council voted to deny Petitioners' application on July 23, 2024, and approved the meeting minutes on August 13, 2024. This Petition, being filed within thirty (30) days from that Final Judgment, is timely filed pursuant to O.C.G.A. §§ 5-3-7(b) and 36-66-5.1(b).

10. Venue lies in Fulton County, Georgia, pursuant to O.C.G.A. §§ 5-3-4(a), 5-3-13(a), and 9-10-30. Official actions giving rise to this lawsuit and appeal, including the denial of Petitioners' SUP Application, occurred in Fulton County, and the Subject Property is in Fulton County.

11. The General Assembly waived sovereign immunity for actions brought pursuant to O.C.G.A. §§ 5-3-1 *et seq.*, which expressly authorizes quasi-judicial appeal petitions against local governments such as Respondent.

12. The Georgia Constitution waived sovereign immunity "for actions in the superior court seeking declaratory relief from acts of . . . any county, consolidated government, or municipality of this state or officer or employee thereof outside the scope of lawful authority or in violation of the laws or the Constitution of this state or the Constitution of the United States." GA. CONST. ART. 1, § 2, ¶ V.

STATEMENT OF FACTS

13. Awa Diagne is an American citizen who emigrated from Senegal approximately 30 years ago.

14. Awa came to this country with her husband to provide a better life for her family. She has done so. Awa and her husband raised six children, all of whom were born in this country.

15. Over the last 30 years, Awa's primary means of supporting herself and her family has been braiding hair. Until recently she ran a braiding shop in Atlanta, where she

developed a strong client base and following. More than just a means of support, Awa truly loves braiding and loves the sense of community her work fosters.

16. In 2021, Awa and her family moved to South Fulton in part so her children could attend the excellent local school. With her husband's help, Awa planned to commute and continue braiding out of her shop in downtown Atlanta.

17. But then tragedy struck. The day after the family moved into their new home, Awa's husband Bathie went to the hospital with Covid. He never came home.

18. As a newly single-parent, Awa couldn't run her shop in Atlanta and be as available as she needed to be for her children. She couldn't manage the commute along with school drop-offs, pickups, and everything else she needed to do to support her family.

19. So Awa closed her Atlanta shop and started braiding out of her home. But that badly limited her income. She couldn't serve as many customers and couldn't have employees. Awa always planned on opening a new braiding shop—she just needed to find the right location at a price she could afford.

20. Recently, Awa found the perfect storefront. It is in a great location in a shopping center right between her home and her children's school. She went to City Hall to make sure she understood everything she needed to do to open her business and then signed a lease. She had to pay several thousands of dollars in rent and a security deposit, and then paid thousands more to build out and renovate her shop. But it was worth it, and Awa was excited to start her new business.

21. While she was getting her storefront set up, Awa worked with the City of South Fulton and did everything the City asked.

22. Even though Awa only braids hair, does not use chemicals, and does not need a cosmetology license to work, the City considers Awa's braiding shop to be a "beauty

salon.” It demanded that Awa apply for a special use permit and seek the City Council’s approval to open. Awa did so.

23. Awa submitted her SUP Application on April 10, 2024.

24. On June 17, 2024, Awa held a public participation meeting in accordance with South Fulton Code of Ordinances Appendix C – Zoning § 803.10 (Public Participation Plan and Report Requirements). There, “[t]he community expressed support for Awa Best Braid and welcomed the business to the community.” Exhibit 2 at 4.

25. The only issue raised at the meeting was a concern of an “inundation of the same businesses.” Exhibit 2 at 11.

26. The City’s Department of Community Development and Regulatory Affairs, Planning and Zoning Division (“Staff”), also reviewed Awa’s SUP Application and recommended approving it on June 26, 2024. The Staff authored detailed findings of fact supporting Awa’s application. Exhibit 2 at 3–4. For example, the findings of fact noted Awa’s shop:

- a. is “consistent” with the City’s comprehensive development plan;
- b. is “compatible” with the neighborhood;
- c. “does not violate local, state, and/or federal statutes, ordinances, or regulations”;
- d. has adequate parking, lighting, and traffic flow;
- e. would “not affect the balance of land uses”; and
- f. “should not affect the character of the neighborhood” or negatively impact adjacent property.

27. No other issues or concerns with Awa’s shop were raised in the Staff’s recommendation.

28. On the City Council's request, the Staff also included a map showing all of the other salons within a one-mile radius of Awa's shop. Exhibit 2 at 9.

29. During a hearing on June 26, 2024, the City's Planning Commission reviewed Awa's SUP Application and the Staff's recommendation to approve it.

30. At the hearing, Awa and her supporters shared her thirty-year history braiding hair and the difficult circumstances that forced her to move her business from downtown Atlanta. They described the differences between African hair braiding and licensed hair styling. And they detailed how Awa would educate high school students to braid hair.

31. In opposition, another local salon owner attended the hearing and argued that she should not have to face competition from Awa. The salon owner also created an online petition, writing that her salon "already offer[s] a wide range of services, including braiding. Allowing another salon to open in close proximity would unnecessarily saturate the market."

32. After a commissioner confirmed the local salon owner had no other issues or concerns other than Awa competing with her, the Planning Commission voted to recommend approving Awa's SUP Application.

33. With the support of the Staff and Planning Commission, Awa should have been in good shape for City Council approval and should have been allowed to open and operate her business. But that's not what happened.

34. At the first City Council hearing on July 9, 2024, Awa and her supporters again shared the details of her business. And again, a local salon owner attended in opposition and argued that "South Fulton is already saturated." (3:07:58).

35. Simply put, the salon owner demanded that the City Council unconstitutionally abuse its power to ban Awa from operating to protect her own business from competition.

36. The City Council heeded the call, and they were not subtle about it. One council member expressly said, “[I]t is not fair for small businesses to have to compete with someone right next door to them.” (3:27:35).

37. At a second hearing on July 23, 2024, a council member said that Awa should find another location where “no one is competing against you and you’re not competing against anyone.” (4:18:50). The council member even mirrored the language from the salon owner’s petition, claiming that the Council needed to prevent businesses from “suffer[ing] any losses” due to “oversaturation.” (4:18:25.)

38. After that rhetoric, the City Council voted to deny Awa’s SUP Application by a 4-3 vote.

39. The City Council denied Awa’s application for purely protectionist reasons. It used and abused its power to protect one business from lawful competition by another.

40. Protectionism is not a legitimate government interest, and it is unconstitutional under binding Supreme Court of Georgia precedent to prevent someone from pursuing their chosen lawful occupation for protectionist reasons. *Raffensperger v. Jackson*, 316 Ga. 383, 392, 888 S.E.2d 483, 492 (2023) (“[C]ertain interests are decidedly *not* sufficient to justify a burden on the ability to practice a lawful profession. These include . . . protectionism.”).

41. At the hearings, Council members also *claimed* that the City had a “like use” ordinance that limited the number of similar businesses that can operate within a mile to a mile-and-a-half of each other. On information and belief, no such ordinance exists, but

Council members' repeated insistence that it does, at minimum, establishes a policy or practice of treating new businesses less favorably if they might compete with an established business.

42. On information and belief, the City Council has denied at least one other business a special use permit in order to protect other businesses from competition.

43. The City Council was clear why it barred Awa from opening her business. Indeed, right before voting to deny Awa's application, the Council expressly argued that it was "not fair" for another salon to "have to compete" with Awa, and that it didn't "want any business to suffer any losses due to an oversaturation." Lest there be any doubt, the Council said it wanted Awa to find another location where she would not be "competing against anyone."

44. On July 23, 2024, before the City Council meeting that evening, Awa's counsel at the Institute for Justice sent a letter to Respondent notifying it that a decision to deny Awa's SUP Application for protectionist reasons—that is, to protect existing businesses from competition—would be unconstitutional. The letter also notified Respondent that Awa should not have had to get a special use permit in the first place, because requiring one for a braiding shop while not requiring one for other similar uses in the same zone is unconstitutional. *See* Exhibit 3.

45. The City Attorney responded to the Institute for Justice's letter by stating, "I appreciate your letter dated July 23, 2024, which had the tenor of potential litigation and also directing and/or seeking a specific outcome from the City Council." July 25, 2024 Email from Vincent Hyman to Erica Smith Ewing. Exhibit 4.

46. Before Respondent made its decision to deny Awa's SUP Application, it was aware that doing so for protectionist reasons was unconstitutional and might result in

litigation. Respondent was also aware that requiring Awa to get a special use permit in the first place was unconstitutional and might result in litigation.

47. Even though the City Council had been warned that doing so would be unconstitutional, it denied the SUP Application and approved the July 23, 2024 meeting minutes on August 13, 2024. Exhibit 5.

INJURIES TO PETITIONERS

48. The City Council's policy and actions mean that Awa cannot open her braiding shop.

49. Awa signed a lease. She has already paid several months of rent and paid thousands of dollars to build out her salon. The City Council's actions have cost her thousands of dollars.

50. Awa is on the hook and personally liable for the remainder of the lease.

51. Every month Awa must pay rent to maintain her retail location. Indeed, every single day that she cannot open, Awa owes more money. The City Council's decision continues to harm her daily.

52. Awa continues to pay rent on the premises, but every day that passes without opening her retail store means losing irreplaceable consumer goodwill.

53. Awa is unable to braid at full capacity and is earning substantially less money than she would if she were allowed to operate in her retail location. While she is permitted to legally braid out of her home, she is legally prohibited from serving nearly as many clients as she could in her retail location and cannot hire any hair braiders. In other words, her income is strictly capped until she can operate her braiding shop.

54. Awa has a network of several braiders who want to work for her at her retail shop. But she cannot hire them without her storefront, and the longer this continues the

more likely it will be that those braiders will need to take on other work. Said another way, she's losing her employees and will not be able to scale her business as efficiently.

55. Awa is suffering continuing harm every day that she cannot open. She is losing income and consumer goodwill while accruing costs. In sum, Awa is out several thousand dollars that she spent, she is on the hook for rent every month, she is personally liable for a lease, she cannot earn money braiding at the shop that she is paying rent on, her earnings are capped, and she is suffering additional harm each and every day.

CAUSES OF ACTION

Count 1 (Petition for Review)

56. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 55.

57. Respondent erred in denying Petitioners' SUP Application. Pursuant to O.C.G.A. §§ 5-3-1 *et seq.*, Petitioners file this Petition for Review seeking reversal of Respondent's denial of Petitioners' SUP Application.⁴

58. Petitioners should not have had to seek a special use permit to operate a braiding shop on the Subject Property when other similar uses are allowed as of right in the same zoning district.

⁴ Although "the grant or denial of a permit relating to a special use of property" is defined as a "zoning decision," which means a "final legislative action by a local government," O.C.G.A. § 36-66-3(4)(E), the Zoning Procedures Law provides in O.C.G.A. § 36-66-5.1(a)(2) that "zoning decisions under subparagraph (E) of paragraph (4) of Code Section 36-66-3 shall be subject to appellate review by the superior court pursuant to its appellate jurisdiction from a lower judicatory body and shall be brought by way of a petition for such review as provided for in Title 5." As such, the denial of a special use permit follows a different path to superior court, through a petition for review, than other zoning decisions, which are reviewed *de novo* under O.C.G.A. § 35-66-5.1(a)(1). As these statutes have not yet been confirmed by the courts, in an abundance of caution, Petitioners include a Count for *de novo* review in the alternative.

59. Petitioners' SUP Application meets all criteria for a special use permit to operate a braiding shop on the Subject Property.

60. Petitioners are entitled to an order from this Court reversing the denial of Petitioners' SUP Application with directions that the use be allowed.

61. Respondent denied Petitioners' SUP Application citing to a "like use" ordinance which, upon information and belief, does not exist. The denial based on an ordinance that does not exist is void. If such an ordinance does exist, it is unlawful and in violation of the Georgia Constitution.

62. Respondent denied Petitioners' SUP Application purely for protectionist reasons in violation of the Georgia Constitution.

63. Respondent's denial of Petitioners' SUP Application was not supported by sufficient evidence because there is no evidence that Petitioners' SUP Application failed to meet the criteria for a special use permit.

64. Respondent's denial of Petitioners' SUP Application was unlawful, arbitrary, capricious, unreasonable, imposes a significant detriment on Petitioners, and was unrelated to the health, safety, morals, or welfare of the public, or to any other legitimate government interest.

Count 2
(Declaratory Judgment for De Novo Review)

65. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 55.

66. In the alternative to Count 1, Petitioners in an abundance of caution seek a de novo review of the denial of the SUP Application.

67. Respondent erred in denying Petitioners' SUP Application. Petitioners file this Petition for Review seeking reversal of Respondent's denial of Petitioners' SUP Application.

68. Petitioners should not have had to seek a special use permit to operate a braiding shop on the Subject Property when other similar uses are allowed as of right in the same zoning district.

69. Petitioners' SUP Application meets all criteria for a special use permit to operate a braiding shop on the Subject Property.

70. Petitioners are entitled to an order from this Court reversing the denial of Petitioners' SUP Application with directions that the use be allowed.

71. Respondent denied Petitioners' SUP Application citing to a "like use" ordinance which, upon information and belief, does not exist. The denial based on an ordinance that does not exist is void. If such an ordinance does exist, it is unlawful and in violation of the Georgia Constitution.

72. Respondent denied Petitioners' SUP Application purely for protectionist reasons in violation of the Georgia Constitution.

73. Respondent's denial of Petitioners' SUP Application was not supported by sufficient evidence because there is no evidence that Petitioners' SUP Application failed to meet the criteria for a special use permit.

74. Respondent's denial of Petitioners' SUP Application was unlawful, arbitrary, capricious, unreasonable, imposes a significant detriment on Petitioners, and was unrelated to the health, safety, morals, or welfare of the public, or to any other legitimate government interest.

Count 3
(Declaratory Judgment for Violation of Due Process)

75. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 55.

76. The Due Process Clause of the Georgia Constitution, Article I, Section I, Paragraph I, provides that “[n]o person shall be deprived of life, liberty, or property except by due process of law.”

77. The Due Process Clause “entitles Georgians to pursue a lawful occupation of their choosing free from unreasonable government interference.” *Raffensperger v. Jackson*, 316 Ga. at 388.

78. Petitioners’ occupation, African-style hair braiding, is lawful but for the challenged restriction upon their ability to braid at the Subject Property.

79. Petitioners do not need an occupational license to practice African-style hair braiding.

80. Respondent’s actions unreasonably interfere with Petitioners’ ability to pursue a lawful occupation of their choosing free from unreasonable government interference.

81. Respondent’s policy, practice, or custom of treating new businesses less favorably if they might compete with an established business significantly burdens Petitioners’ ability to practice African-style hair braiding because Petitioners are not able to braid at their retail location. This severely restricts the number of customers Petitioners can serve, the number of braiders Petitioners can employ, and the amount of money Petitioners can earn braiding hair. Petitioner Awa Diagne cannot earn enough income to support her family without being able to braid at her retail location.

82. “[A] burden on the ability to practice a lawful occupation is only constitutional if it is reasonably necessary to advance an interest in health, safety, or public morals.” *Raffensperger*, 316 Ga. at 391.

83. Respondent’s policy, practice, or custom of treating new businesses less favorably if they might compete with an established business is not reasonably necessary to advance any interest in health, safety, or public morals, or any other legitimate government interest.

84. Respondent cannot offer any legitimate interest behind its policy, practice, or custom of treating new businesses less favorably if they might compete with an established business and not allowing Petitioners to operate a braiding shop at the Subject Property. That is because Respondent denied Petitioners’ SUP Application solely for protectionist reasons—that is, to protect existing businesses from competition.

85. “[C]ertain interests are decidedly *not* sufficient to justify a burden on the ability to practice a lawful profession. These include . . . protectionism.” *Raffensperger*, 316 Ga. at 392.

86. Respondent’s policy, practice, or custom of treating new businesses less favorably if they might compete with an established business and not allowing Petitioners to operate a braiding shop at the Subject Property are not reasonably necessary means of advancing any legitimate public purpose.

87. Under binding precedent holding that protectionism is not a legitimate government interest, Respondent’s actions violate the Due Process Clause of the Georgia Constitution.

88. Petitioners are entitled to a declaratory judgment that Respondent’s policy, practice, or custom of treating new businesses less favorably if they might compete with

an established business violates Georgia's Due Process Clause on its face and as applied to Petitioners. The ends of justice require that such a declaration should be made pursuant to O.C.G.A. § 9-4-2, and there exists a substantial and justiciable controversy with regard to Petitioners' rights as guaranteed by the Georgia Constitution.

89. Petitioners are continually harmed and are entitled to a permanent, and potentially preliminary, injunction requiring Respondent to allow them to operate a braiding shop at the Subject Property as well as prohibiting Respondent and anyone acting under Respondent's authority from preventing Petitioners from opening a braiding shop at the Subject Property.

Count 4
(Declaratory Judgment for Violation of Equal Protection)

90. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 55.

91. The Equal Protection Clause of the Georgia Constitution, Article I, Section I, Paragraph II, provides that "[p]rotection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws."

92. The Equal Protection Clause guarantees the right of similarly situated individuals to be treated similarly.

93. Respondent required Petitioners to submit a SUP Application to open their business, even though they just wanted to open a simple African-style hair braiding shop in a shopping center zoned for commercial use.

94. There is no designation for "braiding shop" in the South Fulton Zoning Code. Even though Awa only braids hair, does not use chemicals, and does not need a

cosmetology license to work, Respondent considers Awa’s braiding shop to be a “beauty salon.”

95. Respondent requires “beauty salons” to have a special use permit to open anywhere in the city. South Fulton Code of Ordinances, Appendix C – Zoning § 207.06 (Use Tables—Commercial Services—812112).

96. Awa should not have had to get a special use permit to operate her braiding shop at the Subject Property.

97. The South Fulton Zoning Code allows comparable uses to Petitioners’ braiding shop in the same commercial, mixed-use zoning district (MIX) as the Subject Property without a special use permit.

98. For example, cosmetology and barber schools are allowed as of right at the Subject Property. South Fulton Code of Ordinances, Appendix C – Zoning § 207.06 (Use Tables—Institutional Uses—611511).

99. Cosmetology and barber schools are similarly situated to Petitioners’ braiding shop.

100. At a cosmetology or barber school, students are taught to cut, style, and possibly even to braid hair.

101. In her braiding shop at the Subject Property, Awa plans to teach high school students how to braid hair.

102. Cosmetology schools are identical to Petitioners’ braiding shop in terms of intensity of use, traffic impact, parking needs, and other impacts on the neighborhood.

103. Requiring a special use permit for Awa’s braiding shop while not requiring a special use permit for cosmetology and barber schools at the Subject Property violates Georgia’s Equal Protection Clause.

104. Retail shops such as beauty supply stores, clothing stores, and jewelry stores are also allowed as of right at the Subject Property. South Fulton Code of Ordinances, Appendix C – Zoning § 207.06 (Use Tables—Retail Trade—4481, 446120, 448310).

105. Retail shops such as beauty supply stores, clothing stores, and jewelry stores are similarly situated to Petitioners’ braiding shop.

106. Retail shops are identical to Petitioners’ braiding shop in terms of intensity of use, traffic impact, parking needs, and other impacts on the neighborhood.

107. Requiring a special use permit for Awa’s braiding shop while not requiring a special use permit for retail shops such as beauty supply stores, clothing stores, and jewelry stores at the Subject Property violates Georgia’s Equal Protection Clause.

108. Respondent’s requirement for beauty salons to get a special use permit, South Fulton Code of Ordinances, Appendix C – Zoning § 207.06 (Use Tables—Commercial Services—812112), violates Georgia’s Equal Protection Clause on its face and as applied to Petitioners.

109. Salon VibeZ is allowed in the same zoning district (and shopping center) as Petitioners’ braiding shop.

110. Salon VibeZ is similarly situated to Petitioners’ braiding shop.

111. Respondent’s policy, practice, and custom of treating established businesses better than new businesses violates Georgia’s Equal Protection Clause on its face and as applied to Petitioners.

112. Petitioners are entitled to a declaratory judgment that South Fulton Code of Ordinances, Appendix C Zoning, § 207.06 (Use Tables—Commercial Services—812112), requiring Awa to obtain a special use permit to operate a braiding shop at the Subject Property, violates Georgia’s Equal Protection Clause on its face and as applied to

Petitioners. The ends of justice require that such a declaration should be made pursuant to O.C.G.A. § 9-4-2, and there exists a substantial and justiciable controversy with regard to Petitioners' rights as guaranteed by the Georgia Constitution.

113. Petitioners are entitled to a declaratory judgment that Respondent's policy, practice, and custom of treating established businesses better than new businesses violates Georgia's Equal Protection Clause on its face and as applied to Petitioners. The ends of justice require that such a declaration should be made pursuant to O.C.G.A. § 9-4-2, and there exists a substantial and justiciable controversy with regard to Petitioners' rights as guaranteed by the Georgia Constitution.

114. Petitioners are continually harmed and are entitled to a permanent, and potentially preliminary, injunction requiring Respondent to allow them to operate a braiding shop at the Subject Property as well as prohibiting Respondent and anyone acting under Respondent's authority from preventing Petitioners from opening a braiding shop at the Subject Property.

**Count 5
(Declaratory Judgment)**

115. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 55.

116. Petitioners are entitled to a declaratory judgment that Respondent's policy, practice, or custom of treating new businesses less favorably if they might compete with an established business violates Georgia's Due Process Clause on its face and as applied to Petitioners. The ends of justice require that such a declaration should be made pursuant to O.C.G.A. § 9-4-2, and there exists a substantial and justiciable controversy with regard to Petitioners' rights as guaranteed by the Georgia Constitution.

117. Petitioners are entitled to a declaratory judgment that South Fulton Code of Ordinances, Appendix C Zoning, § 207.06 (Use Tables—Commercial Services—812112), requiring Awa to obtain a special use permit to operate a braiding shop at the Subject Property, violates Georgia’s Equal Protection Clause on its face and as applied to Petitioners. The ends of justice require that such a declaration should be made pursuant to O.C.G.A. § 9-4-2, and there exists a substantial and justiciable controversy with regard to Petitioners’ rights as guaranteed by the Georgia Constitution.

118. Petitioners are entitled to a declaratory judgment that Respondent’s policy, practice, and custom of treating established businesses better than new businesses violates Georgia’s Equal Protection Clause on its face and as applied to Petitioners. The ends of justice require that such a declaration should be made pursuant to O.C.G.A. § 9-4-2, and there exists a substantial and justiciable controversy with regard to Petitioners’ rights as guaranteed by the Georgia Constitution.

**Count 6
(Permanent Injunction)**

119. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 55.

120. Petitioners would have no adequate remedy at law that could protect them from the harm and damage that will be done to them if Respondents do not allow them to open a braiding shop at the Subject Property.

121. Petitioners will suffer irreparable harm if Respondent does not allow them to open a braiding shop at the Subject Property.

122. Petitioners are continually harmed by Respondent's denial of their SUP Application and Respondent's policy, practice, or custom of treating new businesses less favorably if they might compete with an established business.

123. Petitioners are entitled to a permanent, and potentially preliminary, injunction requiring Respondent to allow them to operate a braiding shop at the Subject Property as well as prohibiting Respondent and anyone acting under Respondent's authority from preventing Petitioners from opening a braiding shop at the Subject Property.

RELIEF REQUESTED

Petitioners respectfully request that the Court grant the following relief:

- A. Reverse Respondent's decision denying Petitioners' SUP Application;
- B. Declare that Respondent's decision denying Petitioners' SUP Application is unconstitutional, unlawful, arbitrary, capricious, unreasonable, imposes a significant detriment on Petitioners, and is unrelated to the health, safety, morals, or welfare of the public;
- C. Declare that Respondent's policy, practice, or custom of treating new businesses less favorably than established businesses if they might compete with an established business violates Petitioners' right to due process under Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983 on its face and as applied to Petitioners, and is therefore void;
- D. Declare that South Fulton Code of Ordinances, Appendix C Zoning, § 207.06 (Use Tables—Commercial Services—812112), requiring beauty salons to get a special use permit violates Petitioners' right to equal protection under Article I, Section I,

Paragraph II of the Constitution of the State of Georgia of 1983 on its face and as applied to Petitioners, and is therefore void;

E. Declare that Respondent's policy, practice, and custom of treating established businesses better than new businesses violates Petitioners' right to equal protection under Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983 on its face and as applied to Petitioners, and is therefore void;

F. Enter a permanent, and potentially preliminary, injunction requiring Respondent to allow Petitioners to open a braiding shop at the Subject Property as well as prohibiting Respondent and anyone acting under Respondent's authority from preventing Petitioners from opening a braiding shop at the Subject Property;

G. Award Petitioners reasonable attorneys' fees and costs in this action pursuant to O.C.G.A. §§ 5-3-20, 9-4-9, 9-15-14, and 13-6-11; and

H. Order such further relief as the Court deems just and proper.

Dated: August 22, 2024.

Respectfully submitted,

Renée D. Flaherty*
DC Bar No. 1011453
William R. Aronin*
NY Bar No. 4820031
Christian Lansinger*
MD Bar No. 2211290007
INSTITUTE FOR JUSTICE
901 North Glebe Road, Suite 900
Arlington, VA 22203
(703) 682-9320
rflaherty@ij.org
waronin@ij.org
clansinger@ij.org

/s/ Andrea J. Pearson
Simon H. Bloom
Georgia Bar No. 064298
Andrea J. Pearson
Georgia Bar No. 409604
BLOOM PARHAM, LLP
977 Ponce de Leon Ave., NE
Atlanta, GA 30306
(404) 577-7710
sbloom@bloom-law.com
apearson@bloom-law.com

* Motions for admission *pro hac vice*
forthcoming

Attorneys for Petitioners/Plaintiffs